

SECOND REGULAR SESSION

SENATE BILL NO. 939

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOFFER.

Read 1st time January 23, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

3859S.02I

AN ACT

To repeal section 383.105, RSMo, and to enact in lieu thereof seven new sections relating to medical malpractice insurance, with an expiration date for a certain section.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 383.105, RSMo, is repealed and seven new sections enacted in lieu thereof, to be known as sections 383.105, 383.106, 383.107, 383.108, 383.124, 383.400, and 383.515, to read as follows:

383.105. 1. Every insurer providing medical malpractice insurance to a Missouri health care provider and every health care provider who maintains professional liability coverage through a plan of self-insurance shall submit to the director of the department of insurance a report of all claims, both open claims filed during the reporting period and closed claims filed during the reporting period, for medical malpractice made against any of its Missouri insureds during the preceding three-month period.

2. The report shall be in writing and contain the following information:

(1) Name and address of the insured and the person working for the insured who rendered the service which gave rise to the claim, if the two are different;

(2) Specialty coverage of the insured;

(3) Insured's policy number;

(4) Nature and substance of the claim;

(5) Date and place in which the claim arose;

(6) Name, address and age of the claimant or plaintiff;

(7) Within six months after final disposition of the claim, the amounts

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 paid, if any, and the date and manner of disposition (judgment, settlement or
19 otherwise);

20 (8) Expenses incurred; and

21 (9) Such additional information as the director may require.

22 3. As used in [this section] **sections 383.100 to 383.125**, "insurer"
23 includes every insurance company authorized to transact insurance business in
24 this state, every unauthorized insurance company transacting business pursuant
25 to chapter 384, RSMo, every risk retention group, every insurance company
26 issuing insurance to or through a purchasing group, **every entity operating**
27 **under this chapter**, and any other person providing insurance coverage in this
28 state[. With respect to any insurer transacting business pursuant to chapter 384,
29 RSMo, filing the report required by this section shall be the obligation of the
30 surplus lines broker or licensee originating or accepting the insurance],
31 **including self-insured health care providers.**

383.106. 1. To monitor effectively the insurance marketplace
2 **rates, financial solvency, affordability, and availability of medical**
3 **malpractice coverage, the director shall establish by rule or order**
4 **reporting standards for insurers by which the insurers, or an advisory**
5 **organization designated by the director, shall report annually such**
6 **Missouri medical malpractice insurance premium, loss, exposure, and**
7 **other information as the director may require.**

8 2. The director shall, prior to May 30, 2007, establish risk-
9 reporting categories for medical malpractice insurance, as defined in
10 section 383.150, and shall establish regulations for the reporting of all
11 base rates and premiums charged by such categories. The director shall
12 consider the history of prior court judgments for claims under this
13 chapter in each county of the state in establishing the risk reporting
14 categories.

15 3. The director shall collect the information required in this
16 section and compile it in a manner appropriate for assisting Missouri
17 medical malpractice insurers in developing their future base rates,
18 schedule rating or individual risk rating factors, and other aspects of
19 their rating plans. In compiling the information and making it available
20 to Missouri insurers and the public, the director shall remove any
21 individualized information that identifies a particular insurer as the
22 source of the information. The director may combine such information
23 with similar information obtained through insurer examinations so as

24 to cover periods of more than one year.

25 4. All insurers, including self-insured health care providers,
26 relating to medical malpractice insurance as defined in section 383.150,
27 shall provide to the director, beginning on June 1, 2008, and not less
28 than annually thereafter, an accurate report as to the actual rates,
29 including assessments levied against members, charged by such company
30 for such insurance, for each of the risk-reporting categories established
31 under this section.

383.107. Not later than December 31, 2009, and at least annually
2 thereafter, the director shall, utilizing the information provided under
3 section 383.106, establish and publish a market rate reflecting the
4 median of the actual rates charged for each of the aforesaid risk-
5 reporting categories for the preceding year by all insurers with at least
6 a three percent market share of the medical malpractice insurance
7 market as of December thirty-first of the prior year.

383.108. 1. The director shall establish reporting standards for
2 insurers by which the insurers shall report their base rates for the risk-
3 reporting categories designated by the director, in whatever categories
4 the director determines to be actuarially appropriate.

5 2. The director shall collect the information required in
6 subsection 1 of this section and shall create a database to be made
7 available to the public that compares the base rates charged by each
8 insurer actively writing medical malpractice insurance.

383.124. 1. If the director determines that a person has engaged,
2 is engaging, or is about to engage in a violation of sections 383.100 to
3 383.125 or a rule adopted or order issued pursuant thereto, or that a
4 person has materially aided, is materially aiding, or is about to
5 materially aid an act, practice, omission, or course of business
6 constituting a violation of sections 383.100 to 383.125 or a rule adopted
7 or order issued pursuant thereto, the director may issue such
8 administrative orders as authorized under section 374.046, RSMo. A
9 violation of any provisions under these sections is a level two violation
10 under section 374.049, RSMo. The director of insurance may also
11 suspend or revoke the license or certificate of authority of any person
12 for any such willful violation as authorized under section 374.047, RSMo.

13 2. If the director believes that a person has engaged, is engaging,
14 or is about to engage in a violation of sections 383.100 to 383.125 or a

15 rule adopted or order issued pursuant thereto, or that a person has
16 materially aided, is materially aiding, or is about to materially aid an
17 act, practice, omission or course of business constituting a violation of
18 sections 383.100 to 383.125 or a rule adopted or order issued pursuant
19 thereto, the director may maintain a civil action for relief authorized
20 under section 374.048, RSMo. A violation of any provision under these
21 sections is a level two violation under section 374.049, RSMo.

383.400. 1. As used in this section, the term "insurer" or "insurers"
2 means any insurance company, mutual insurance company, medical
3 malpractice association, any entity created under this chapter, or other
4 entity providing any insurance to any health care provider, as defined
5 in section 538.205, RSMo, practicing medicine in the state of Missouri,
6 against claims for malpractice or professional negligence; provided,
7 however, that the term "insurer" or "insurers" shall not mean any surplus
8 lines insurer operating under chapter 384, RSMo, or any entity to the
9 extent it is self-insuring its exposure to medical malpractice liability.

10 2. Notwithstanding any other provision of law, no insurer shall,
11 with regards to medical malpractice insurance, as defined in section
12 383.150:

13 (1) Charge an assessment or surcharge, or increase the premium
14 charges, by more than twenty-five percent for such insurance without
15 first providing written notice by United States mail to the insured at
16 least ninety days prior to the effective date of such actions; provided,
17 however, such notice is not required if the premium change is due to the
18 request of the insured;

19 (2) Fail or refuse to renew the aforesaid insurance without first
20 providing written notice by certified United States mail to the insured
21 at least ninety days prior to the effective date of such actions, unless
22 such failure or refusal to renew is based upon a failure to pay sums due
23 or a termination or suspension of the health care provider's license to
24 practice medicine in the state of Missouri, termination of the insurer's
25 reinsurance program, or a material change in the nature of the insured's
26 health care practice; or

27 (3) Cease the issuance of such policies of insurance in the state of
28 Missouri without first providing written notice by certified United
29 States mail to the insured and to the Missouri department of insurance
30 at least one hundred eighty days prior to the effective date of such

31 actions.

32 3. Any insurer that fails to provide the notice required under
33 subdivisions (1) and (2) of subsection 2 of this section shall, at the option
34 of the insured, continue the coverage in accordance with the provisions
35 of subdivision (2) of subsection 6 of section 379.321, RSMo.

383.515. 1. There is hereby created within the department of
2 insurance the "Health Care Stabilization Fund Feasibility Board". The
3 primary duty of the board is to determine whether a health care
4 stabilization fund should be established in Missouri to provide excess
5 medical malpractice insurance coverage for health care providers. As
6 part of its duties, the board shall develop a comprehensive study
7 detailing whether a health care stabilization fund is feasible within
8 Missouri, or specified geographic regions thereof, or whether a health
9 care stabilization fund would be feasible for specific medical
10 specialties. The board shall analyze medical malpractice insurance data
11 collected by the department of insurance under sections 383.105 to
12 383.106 and any other data the board deems necessary to its mission. In
13 addition to analyzing data collected from the Missouri medical
14 malpractice insurance market, the board may study the experience of
15 other states that have established health care stabilization funds or
16 patient compensation funds. If a health care stabilization fund is
17 determined to be feasible within Missouri, the report shall also
18 recommend to the general assembly how the fund should be structured,
19 designed, and funded. The report may contain any other
20 recommendations relevant to the establishment of a health care
21 stabilization fund, including but not limited to, specific
22 recommendations for any statutory or regulatory changes necessary for
23 the establishment of a health care stabilization fund.

24 2. The board shall consist of ten members. Other than the
25 director, the house members and the senate members, the remainder of
26 the board's members shall be appointed by the director of the
27 department of insurance as provided for in this subsection. The board
28 shall be composed of:

29 (1) The director of the department of insurance, or his or her
30 designee;

31 (2) Two members of the Missouri senate appointed by the
32 president pro tem of the senate with no more than one from any political

33 party;

34 (3) Two members of the Missouri house of representatives
35 appointed by the speaker of the house with no more than one member
36 from any political party;

37 (4) One member who is licensed to practice medicine and surgery
38 in Missouri who is on a list of nominees submitted to the director by an
39 organization representing Missouri's medical society;

40 (5) One member who is a doctor of osteopathy and who is on a list
41 of nominees submitted to the director by an organization representing
42 Missouri doctors of osteopathy;

43 (6) One member who is a licensed nurse in Missouri and who is on
44 a list submitted to the director by an organization representing Missouri
45 nurses;

46 (7) One member who is a representative of Missouri hospitals and
47 who is on a list of nominees submitted to the director by an organization
48 representing Missouri hospitals; and

49 (8) One member who is a physician and who is on a list submitted
50 to the director by an organization representing family physicians in the
51 state of Missouri.

52 3. The director shall appoint the members of the board, other than
53 the general assembly members, no later than January 1, 2007. Once
54 appointed, the board shall meet at least quarterly, and shall submit its
55 final report and recommendations regarding the feasibility of a health
56 care stabilization fund to the governor and the general assembly no later
57 than December 31, 2010. The board shall also submit annual interim
58 reports to the general assembly regarding the status of its progress.

59 4. The board shall have the authority to convene conferences and
60 hold hearings. All conferences and hearings shall be held in accordance
61 with chapter 610, RSMo.

62 5. The director of the department of insurance shall provide and
63 coordinate staff and equipment services to the board to facilitate the
64 board's duties.

65 6. Board members shall receive no additional compensation but
66 shall be eligible for reimbursement for expenses directly related to the
67 performance of their duties.

68 7. The provisions of this section shall expire December 31, 2010.



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